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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,402	03/19/2001	William Frederick Schacht	4635/234	9927
757	7590	01/04/2005	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			TRAN, HANH VAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/701,402

Applicant(s)

SCHACHT ET AL.

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-14, 16-21 and 102-125 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-14, 16-21, 102-115 and 120-125 is/are rejected.
- 7) ☒ Claim(s) 116-119 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/24/04 & 5/18/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 9/7/2004.

#### ***Claim Objections***

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 121(on page 12 of the above-noted amendment), 123, and 124 have been renumbered 123, 124, and 125, respectively.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2-14, 16, and 102-105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mollenkopf in view of Canfield et al, Behrendt and the ordinary skill of one versed in the art.

Mollenkopf is cited to show a desk 10 with a worksurface 20 supported by cantilever members 18 attached to stanchions 12 in a suitable manner, the stanchions having openings 22 and covers 49 and having brackets 40 attached to the stanchions. The differences being that Mollenkopf fails to show an adjustable worksurface, J-shaped brackets having structural limitations in claims 103-105 or trapezoidal stanchions. However, Mollenkopf cites Canfield et al as disclosing the superstructure of the uprights/stanchions 12. Canfield shows uprights having slots 42 and brackets having hooks 49 supporting the worksurface and a trough/bracket that is more or less J-shaped attached to the uprights/stanchions and a panel by brackets 155; wherein the J-shaped bracket comprises a horizontal surface 87, such as shown in Fig 23, having a first edge and a second edge being substantially parallel to the first edge, a first vertical surface 87A integrally attached to the first edge of the horizontal surface and entirely extends upwardly, a second vertical surface 153 integrally attached to the second edge and entirely extends upwardly, said second vertical surface being shorter than the first vertical surface, and no cover being directly connected to the first and second vertical surfaces in order to provide a wire management trough for the modular desk. Generally the shape of an element is considered an obvious matter of design choice. Here the shape of the stanchions, the approximate angle of intersection of surfaces, and the brackets are considered to be an obvious modification of the shape of elements within the ability of one having an ordinary skill in the art. Behrendt is cited to show that it is well known to use the trapezoidal shape for a stanchion. Since the references

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are from the same field of endeavor the purpose of Behrendt and Canfield et al would have been obvious in the pertinent art of Mollenkopf at the time of the invention and it would have been obvious for one having an ordinary skill in the art to have modified Mollenkopf with stanchions having a trapezoidal shape in view of Behrendt, and with the trough/brackets having a J-shape which includes structures as recited in claims 103-104 for the purpose of supporting wires and with slots in the stanchion and hooks in the bracket to adjustable support the worksurface relative to the stanchions in view of Canfield et al and as an obvious matter of design choice within the ability of one versed in the art. Official Notice is taken of the approximately 93.5 degree angle of claims 6 and 7 (see also USP 3,523,716 to Roggio, Jr. et al for said teaching). The shape of an element is an obvious matter of design choice for one versed in the art. The angle of intersection of two sides of a stanchion is therefore not a patentable distinction in the art.

6. Claims 17-21, and 106-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mollenkopf in view of Canfield et al, USP 5,906,420 to Rozier et al, Behrendt and the ordinary skill of one versed in the art.

Mollenkopf is cited to show a desk 10 with a worksurface 20 supported by cantilever members 18 attached to stanchions 12 in a suitable manner, the stanchions having openings 22 and covers 49 and having brackets 40 attached to the stanchions. The differences being that Mollenkopf fails to show an adjustable worksurface, a J-shaped bracket having structural limitations in claims 106-108, a second bracket attached to said first and second floor stanchions and having structural limitations as recited in claims 109-114 or trapezoidal stanchions. However, Mollenkopf cites Canfield et al as disclosing the superstructure of the uprights/stanchions 12. Canfield shows uprights having slots 42 and brackets having hooks 49

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supporting the worksurface and a trough/bracket that is more or less J-shaped attached to the uprights/stanchions and a panel by brackets 155; wherein the J-shaped bracket comprises a horizontal surface 87, such as shown in Fig 23, having a first edge and a second edge being substantially parallel to the first edge, a first vertical/interior surface 87A integrally attached to the first edge of the horizontal surface and entirely extends upwardly, a second vertical/exterior surface 153 integrally attached to the second edge and entirely extends upwardly, said second vertical/exterior surface being shorter than the first vertical/interior surface, and no cover being directly connected to the first and second vertical surfaces in order to provide a wire management trough for the modular desk. Rozier et al shows modular desk system having two wire management brackets 31,34, such as shown in Fig 3, for the purpose physically separate electrical power and data cables in order to avoid electrical interference. Generally the shape of an element is considered an obvious matter of design choice. Here the shape of the stanchions, the approximate angle of intersection of surfaces, and the brackets are considered to be an obvious modification of the shape of elements within the ability of one having an ordinary skill in the art. Behrendt is cited to show that it is well known to use the trapezoidal shape for a stanchion. Since the references are from the same field of endeavor the purpose of Behrendt, Canfield et al, and Rozier et al would have been obvious in the pertinent art of Mollenkopf at the time of the invention and it would have been obvious for one having an ordinary skill in the art to have modified Mollenkopf with stanchions having a trapezoidal shape in view of Behrendt, and with the first brackets having a J-shape which includes structures as recited in claims 103-108 for the purpose of supporting wires and with slots in the stanchion and hooks in the bracket to adjustable support the worksurface relative to the stanchions in view of Canfield et al, and a

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second bracket attached to the first and second stanchions which second bracket includes structures as recited in claims 109-114 for the purpose physically separate electrical power and data cables in order to avoid electrical interference in view of Rozier et al, and as an obvious matter of design choice within the ability of one versed in the art.

7. Claims 120-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mollenkopf, as modified, as applied to claim 17 above, and further in view of USP 5,065,556 to DeLong et al.

Mollenkopf, as modified, discloses all the elements as discussed above except for an upper front panel attached to the second bracket and pivoting from an open position to a closed position, the upper front panel engages a top edge of the J-shaped brackets to pivot to said closed position, a lower front panel attached to the second bracket and pivoting from a downward direction to an upward direction, and a lower front panel attached to the support surface of the second bracket and pivoting from a downward direction to an upward direction.

DeLong et al teaches the idea of providing a modular electrical raceway system comprising, such as shown in Fig 15, first and second brackets (60,64) having an upper front panel attached to the second bracket and pivoting from an open position to a closed position, the upper front panel engages a top edge of the J-shaped brackets to pivot to said closed position, a lower front panel attached to the second bracket and pivoting from a downward direction to an upward direction, and a lower front panel attached to the support surface of the second bracket and pivoting from a downward direction to an upward direction, wherein the upper and lower front panels provides aesthetic-looking electrical raceway, yet provides easy access to wirings within the interior of the brackets. Therefore, it would have been obvious to modify the structure

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of Mollenkopf, as modified, by providing an upper front panel attached to the second bracket and pivoting from an open position to a closed position, the upper front panel engages a top edge of the J-shaped brackets to pivot to said closed position, a lower front panel attached to the second bracket and pivoting from a downward direction to an upward direction, and a lower front panel attached to the support surface of the second bracket and pivoting from a downward direction to an upward direction in order to provide an aesthetic-looking electrical raceway, yet provide easy access to wirings within the interior of the brackets, as taught by DeLong et al, since both teach alternate conventional electrical raceway structure, used for the same intended purpose, thereby providing structure as claimed.

***Allowable Subject Matter***

8. Claims 116-119 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments filed 9/7/2004 have been fully considered but they are not persuasive. In response to applicant's arguments on page 14 that "the tab 155c of the bracket 155 merely rests on the sidewall 28 and is not attached to the uprights", and demand the examiner to identify where Canfield disclose the recited attachment, the examiner takes the position that the claimed language fails to provide adequate structural limitations to specify that the J-shaped bracket being connected to the stanchions by some kind of mechanical means, thus the structures of Canfield meet the limitation of a J-shaped bracket "attached" to the stanchions.



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10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, since Canfield is being cited in the Specification of Mollenkopf, its entire disclosure is clearly in the pertinent art of Mollenkopf at the time of the invention.

11. In response to applicant's request on page 15 that the examiner is to provide documentary to support the Official Notice of the obtuse angle of approximately 93.5 degrees, please see USP 3,523,716 to Roggio, Jr. et al

12. In response to applicant's argument on page 15 that if the uprights of Mollenkopf and Canfield are changed to have the trapezoidal shape, members which are adjacent the uprights need to have significant changes, the examiner takes the position that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

13. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

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combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (703) 308-6302. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT *HVT*  
December 26, 2004

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